



C.M.A.(MD).No.683 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

RESERVED ON : 02.08.2024

DELIVERED ON : 19.08.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.683 of 2021
and C.M.P.(MD).No.6333 of 2021

Bajaj Allianz General Insurance Company Ltd.,
Through its Branch Manager,
GE Plaza, Airport Road, Yerwada,
Pune. ... Appellant/Respondent No.2.

Vs.

- 1.Ponnuthai
- 2.Minor Ezhilmaran
- 3.Minor Mariammal ... Respondents No.1 to 3/Petitioners 1 to 3
(Minor respondents 2 and 3 through their mother and next guardian the first respondent herein)
- 4.John H.Epaenaetus ... Respondent No.4/Respondent No.1.

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the Judgment and decree dated 26.02.2021 in M.C.O.P.No.377 of 2016 on the file of the Motor Accident Claims Tribunal Authority/Special Subordinate Judge of Tirunelveli.



C.M.A.(MD).No.683 of 2021

For Appellant : Mr.Mr.V.Sakthivel
For Respondents : Mr.T.Selvakumaran for R1 to R3
R4 – Notice Dispensed with.

JUDGMENT

This appeal has been directed against the Judgment and decree dated 26.02.2021 in M.C.O.P.No.377 of 2016 on the file of the Motor Accident Claims Tribunal Authority/Special Subordinate Judge of Tirunelveli.

2.The facts in brief:

On 22.04.2014 at about 09.00 a.m., the deceased was walking on the mud road portion near the Pethu Reddipatti Junction on the Sattur to Kovilpatti National Highways. At that time a car bearing registration No.KA 05 MH 3566, which belongs to the first respondent was driven by its driver in rash and negligent manner and hit the deceased. The deceased fell down and sustained grievous injuries and died on the spot. A case in Crime No.80 of 2014 was registered against the first respondent under Section 304 A of IPC, by the Sattur police station.



C.M.A.(MD).No.683 of 2021

3.Claiming compensation amount of Rs.9,00,000/- the dependents filed the claim application. That was resisted by the Insurance company and the first respondent herein by filing counter contending that the petitioners are not the legal heirs of the deceased Sandhana Mary. Sandhana Mary was the first wife of one Marimuthu. They had no children. Therefore, Marimuthu married the first petitioner. Later Sandhana Mary and Marimuthu are no more. The first petitioner is the second wife of Marimuthu and other petitioners are their children born through the first petitioner and the deceased Marimuthu. So they cannot claim the dependency.

4.Apart from that he has also contended that the deceased suddenly crossed the road without minding the traffic and invited the accident. The second respondent namely the appellant herein made the very same contention in the counter.

5.Regarding the first aspect of negligence the Tribunal recorded the finding that it occurred due to the rash and negligent driving on the part of the first respondent's vehicle driver in the main petition.



C.M.A.(MD).No.683 of 2021

WEB COPY

6.Regarding the compensation amount the age of the deceased was fixed at 62. The notional income was fixed at Rs.3,000/- per month. Multiplier 7 was adopted. After deducting 1/3rd of the amount towards the personal and living expenses, it calculated the dependency at Rs.1,68,000/-. To that other customary amounts namely loss of estate and funeral expenses were also added. Finally, it awarded Rs.1,98,000/- as compensation.

7.Regarding the claimant's right to claim compensation, the Tribunal recorded a finding that the claimants can be considered as legal representatives of the deceased. The claimants being the legal heirs of her husband are entitled to succeed to the estate of the deceased. By finding so, the Tribunal concluded that the claimants are entitled to maintain claim application.

8.Against which, this appeal is preferred by the appellant contending the very same grounds stating that the claimants cannot be construed as dependants of the deceased. During the course of enquiry



C.M.A.(MD).No.683 of 2021

made by the insurance company, it was found that no legal heirs were available to the deceased Sandhana Mary.

9.Per contra, the learned counsel for the respondent would submit that the contentions raised by the appellants was rightly rejected by the Tribunal for valid reasons. So, no interference is called for in the above said finding.

10.Regarding the compensation amount, no argument was advanced. The age of the deceased as mentioned above was taken as 62. Due to the absence of direct evidence to show the monthly income, it was taken notionally as Rs.3,000/-. So that part of the finding and assessment of compensation requires no interference.

11.Regarding the negligence also no arguments was advanced by the appellant. He advanced his arguments only regarding the dependency. Now we will go to the judgment of the Tribunal on that aspect. The Tribunal relied upon the Judgment of the Division Bench of this Court in the case of *Anandha Lakshmi and another Vs. Tamil*



C.M.A.(MD).No.683 of 2021

Nadu State Transport Corporation (Villupuram Division – I)Ltd.,

Villupuram reported in ***2017 (1) TN MAC 383 (DB)***, wherein a similar situation arose. The Division Bench of this Court by following the Judgment of the Honourable Supreme Court has a finding that the legal representatives can maintain a claim application under Section 166 of the Motor Vehicles Act and not necessarily that they must be dependants of the deceased, because the legal representatives can and will be entitled to the estate of the deceased. The Tribunal has recorded the finding that the claimants are the legal heirs of the deceased's husband. So they are entitled to succeed to the estate of the deceased.

12.It is admitted by both sides that deceased Sandhana Mary and Marimuthu have no children. So Marimuthu married the first petitioner. Through her other claimants born. Now Sandhana Mary died in the accident. Marimuthu also died. So the estate of the deceased will devolved upon the legal heirs of the deceased's husband as per Section 15(1)(b) of the Hindu Succession Act, which reads as under:

***“15.General rules of succession in the case of female Hindus.-(1).....
(b),Secondly, upon the heirs of the husband.”***



C.M.A.(MD).No.683 of 2021

13.In view of the above, the estate of the deceased devolved upon the legal heirs of the deceased husband. Therefore, they are very well entitled to claim the compensation amount as held as in **Anandha Lakshmi's case** as stated above. In view of the above said, I find no reason to interfere with the order of the Tribunal. This appeal fails.

14.Accordingly, this civil miscellaneous petition stands dismissed. The award passed by the Tribunal is hereby confirmed. There shall be no order as to costs.

19.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
TM

To

1.The Special Subordinate Judge, Motor Accident Claims Tribunal,
Tirunelveli.

2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.M.A.(MD).No.683 of 2021

G.ILANGOVAN,J.

TM

C.M.A.(MD).No.683 of 2021

19.08.2024